

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3141 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SURYODAYA YUVAK MANDAL

Versus

STATE OF GUJARAT

Appearance:

MR MB GANDHI for Petitioner
MR RM DESAI for Respondent No. 1
MR MC BHATT for Respondent No. 2
MR AD OZA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 13/01/2000

ORAL JUDGEMENT

Heard learned counsel Mr. Gandhi for the
petitioner. None is present on behalf of Respondent
Nos.2 & 4.

During the course of submissions, Mr. Gandhi appearing for the petitioner placed reliance on the decision of this Court in Spl.Civil Application No. 2741/80 (Coram : B.K.Mehta, J) decided on 12.2.1982 and has submitted that if any existing school is an aggrieved party and without hearing the objections of such school, the matter of starting a school in the same locality or vicinity cannot be decided. In the present case, according to Mr. Gandhi, Respondent No.4 was granted permission for starting new school in violation of the policy laid down by the Government and ratio enunciated in the above-referred decision of this Court.

I have gone through the averments made by the petitioner in the petition and affidavits filed on behalf of Respondent Nos. 1 & 2. The contesting respondents have successfully assailed the allegations made in the petition. It is clear from the order Annex.A that permission to start a school was granted to Respondent No.4 as a special case by the State Government. Proper inquiries were made and Respondent No.4 was directed to get his Institution registered under sec. 48 of the Gujarat Secondary Education Act. The approval granted by the State Government is based on careful consideration. It is also clear from the proceedings and findings recorded by the Deputy Secretary, Education Department, in the said order that the objections raised by the petitioner are not acceptable and further observed that on other relevant counts also, approval/permission granted to Respondent No.4 is just and proper. It is pertinent to note that the order of approval/permission was challenged by way of an appeal and said appeal came to be dismissed by the Deputy Secretary. The order of dismissal of appeal is at Annexure: B. The same is a reasoned order and does not require any interference in exercise of the powers under Article 226 and/or 227 of the Constitution of India. In number of cases, this Court has refused ad-interim relief as is refused in the instant case and so it can legitimately be inferred today that since June 1986, school of Respondent No.4 is actively working as an educational institution. If any of the reliefs as prayed for by the petitioner in this petition is granted, the same may create various complicated questions of facts as well as of law. At the time of exercising discretionary jurisdiction, the Court cannot ignore this aspect also. In nutshell, this is not a fit case where powers under Article 226 and/or 227 of the Constitution of India should be exercised. There is no merit in the petition.

Miss Meena Trivedi appeared for Mr. Roshan Desai, for Respondent No.1. She has nothing to add as petition is dismissed by this Court.

For the reasons aforesaid, petition is dismissed.
Rule is discharged. No order as to costs.

13.1.2000 [C.K. BUCH, J]
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